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6 ADDIE KITCHEN, as ADMINISTRATOR
7 OF THE ESTATE OF STEVEN TAYLOR
8 and MACALA MOORE as GUARDIAN
9 OF MINOR S.T.M. and ASHA ATKINS as
10 GUARDIAN OF MINOR K.T.,

11 Plaintiffs,

12 v.

13 CITY OF SAN LEANDRO, and
14 POLICE OFFICER JASON
15 FLETCHER AND POLICE OFFICER
16 STEFAN OVERTON,

17 Defendants.

18
19 Case No. 4:22-cv-02373-JSW

20
21 **ORDER GRANTING MOTION TO
22 DISMISS**

23 Re: Dkt. No. 22

24
25 Now before the Court for consideration is the motion to dismiss filed by Defendant City of
26 San Leandro (“the City”) and joined by Defendants Officer Jason Fletcher (“Fletcher”) and
27 Officer Stefan Overton (“Overton”) (collectively, “Defendants”). The Court has considered the
parties’ papers, relevant legal authority, and the record in this case, and HEREBY GRANTS
Defendant’s motion to dismiss with leave to amend.

28
29 **BACKGROUND**

30 Plaintiffs Addie Kitchen, Macala Moore, and Asha Atkins (collectively, “Plaintiffs”) bring
31 this action against the Defendants as a result of an incident between Fletcher, Overton and Steven
32 Taylor (“Taylor”) in which Taylor was fatally shot. Plaintiffs were all related to Taylor.

33
34 On April 18, 2020, the San Leandro Police Department (“SLPD”) received a call from a

1 Walmart in San Leandro about a shoplifter brandishing a baseball bat in the store. (Dkt. No. 1,
2 Complaint, ¶ 13.) SLPD Officer Fletcher and Officer Overton responded to the call, each in their
3 own vehicle, with Fletcher arriving first on the scene. (*Id.*, ¶ 14.) Upon arriving at the Walmart,
4 Fletcher spoke with a Walmart security officer who stated that Taylor had been hostile to store
5 employees while holding a baseball bat. (*Id.*, ¶ 15.) Overton arrived on the scene at the same time
6 that Fletcher proceeded into the store. (*Id.*, ¶ 16.)

7 When he entered the Walmart, Fletcher saw Taylor holding a baseball bat, approximately
8 15 feet away from him. (*Id.*, ¶ 18.) Plaintiffs allege that Fletcher “recognized that Taylor was
9 suffering a mental health episode.” (*Id.*, ¶ 19.) Fletcher approached Taylor and tried to confiscate
10 the bat, but Taylor did not relinquish the bat and instead took a few steps back from Fletcher. (*Id.*,
11 ¶ 20.) As Taylor moved back, Fletcher unholstered his firearm with his right hand and his taser
12 with his lefthand. (*Id.*, ¶ 21.) Fletcher fired his taser at Taylor, causing Taylor to take several
13 steps backward. (*Id.*, ¶ 22.) Fletcher fired his taser a second time causing Taylor to “bend his
14 body over” and take “halting” steps toward Fletcher. (*Id.*) Fletcher then fired his gun at Taylor,
15 hitting Taylor in the chest. (*Id.*, ¶ 23.) As a result, Taylor dropped the bat and fell to the ground.
16 (*Id.*) Plaintiffs claim that Taylor “stumbled backwards” because of the gunshot. (*Id.*, ¶ 23.)

17 Overton entered the Walmart as Fletcher fired his gun, and ran over to Fletcher, at which
18 point Overton withdrew his taser. (*Id.*, ¶ 24.) After Taylor dropped the bat, Overton fired his
19 taser. (*Id.*, ¶ 25.) As a result of this incident, Taylor died. (*Id.*, ¶ 1.)

20 Plaintiffs initiated this action on April 15, 2022, alleging five causes of action against the
21 City, Fletcher, and Overton: (1) 42 U.S.C. § 1983 Excessive Force; (2) 42 U.S.C. § 1983
22 Municipal Liability (“*Monell* liability”); (3) Violations of Title II of the Americans with
23 Disabilities Act (“ADA”) and the Rehabilitation Act; (4) Battery – Wrongful Death; and (5)
24 Negligence – Wrongful Death. The City filed the instant motion seeking to dismiss Plaintiffs’
25 second and third causes of actions.

26 The Court will address additional facts as necessary in its analysis.

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ANALYSIS

2 A. Applicable Legal Standard.

3 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the
4 pleadings fail to state a claim upon which relief can be granted. A court’s “inquiry is limited to
5 the allegations in the complaint, which are accepted as true and construed in the light most
6 favorable to the plaintiff.” *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).
7 Even under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), “a plaintiff’s
8 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
9 conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell*
10 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286
11 (1986)).

12 Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but
13 must instead allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.
14 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
15 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). In reviewing the plausibility
16 of a complaint, courts “accept factual allegations in the complaint as true and construe the
17 pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire &*
18 *Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, courts do not “accept as true
19 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
20 inferences.” *In re Gilead Scis. Sec. Litig.*, F.3d 1049, 1055 (9th Cir. 2008).

21 If dismissal is appropriate, a court “should grant leave to amend even if no request to
22 amend the pleading was made, unless it determines that the pleading could not possibly be cured
23 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (quotation
24 marks and citation omitted).

26 B. The Court Grants Defendants’ Motion to Dismiss Claim II.

27 Count II of the Complaint seeks damages for Section 1983 Municipal Liability, also
28 known as a *Monell* violation. *See Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658 (1978).

1 Defendants argue that the *Monell* claim should be dismissed because the Plaintiffs did not provide
2 sufficient information to support the existence of a widespread custom or policy that would
3 support a claim under *Monell*. In response, Plaintiffs voluntarily withdraws Claim II. Because
4 Plaintiffs do not contest dismissal of their second claim, the Court GRANTS Defendants' motion
5 to dismiss as to Claim II.

6 **C. The Court Grants Defendants' Motion to Dismiss the ADA Claim.**

7 Plaintiffs claim that Fletcher's and Overton's interaction with Taylor violated the ADA
8 and the Rehabilitation Act because the officers did not properly accommodate Taylor's disability.
9 Title II of the ADA provides that "no qualified individual with a disability shall, by reasons of
10 such disability, be excluded from participation in or be denied the benefits of the services,
11 programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42
12 U.S.C. § 12132 ("Title II"). Only public entities are subject to Title II" *City & Cnty. of S.F. v. Sheehan*, 575 U.S. 600, 610 (2015).

14 Section 504 of the Rehabilitation Act provides that "[n]o otherwise qualified handicapped
15 individual in the United States . . . shall, solely by reason of his handicap, be excluded from
16 participation in, be denied the benefits of, or be subjected to discrimination under any program or
17 activity receiving Federal financial assistance." 29 U.S.C. § 794. Title II of the ADA was
18 expressly modeled after Section 504 of the Rehabilitation Act. The Court analyzes the claims
19 together, as there is no significant difference in the analysis of rights and obligations created by
20 the two acts. *See Duvall v. County of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2002).

21 In order to state a claim of disability discrimination under Title II, a plaintiff must allege
22 that:

23 (1) the plaintiff is an individual with a disability; (2) the plaintiff is
24 otherwise qualified to participate in or receive the benefit of some
25 public entity's services, programs or activities; (3) the plaintiff was
26 either excluded from participation in or denied the benefits of the
27 public entity's services, programs, or activities, or was otherwise
28 discriminated against by the public entity; and (4) such exclusion,
denial of benefits, or discrimination was by reason of the plaintiff's
disability.

Bresaz v. Cnty. of Santa Clara, 136 F. Supp. 3d 1125, 1132 (N.D. Cal. 2015).

1 The Ninth Circuit has recognized “at least two types of Title II claims applicable to
2 arrests”:

3 (1) wrongful arrest, where police wrongly arrest someone with a
4 disability because they misperceive the effects of that disability as
5 criminal activity; and (2) reasonable accommodation, where,
6 although police properly investigate and arrest a person with a
7 disability for a crime unrelated to that disability, they fail to
8 reasonably accommodate the person’s disability in the course of
9 investigation or arrest, causing the person to suffer greater injury or
10 indignity in that process than other arrestees.

11 *Sheehan v. City & Cnty. of S.F.*, 743 F.3d 1211, 1232 (9th Cir. 2014) (citations omitted), *rev’d in*
12 *part on other grounds, City & Cnty. of S.F. v. Sheehan*, 575 U.S. 600 (2015). In the instant case,
13 Plaintiffs allege that Defendants “demonstrated a failure to provide reasonable modifications to its
14 policies and practices to accommodate Taylor’s disability related needs when making contact with
15 him.” (Complaint, ¶ 61.) Thus, Plaintiffs appear to raise a claim for unreasonable accommodation
16 under the second type of ADA arrest claim.

17 To prevail on a reasonable accommodation theory, a disabled individual must show that
18 the public entity in question “[had] knowledge that the individual was disabled, either because that
19 disability is obvious or because the individual (or someone else) has informed the entity of the
20 disability.” *Lawman v. City & Cnty. of S.F.*, 159 F. Supp. 3d 1130, 1149 (N.D. Cal. 2016)
21 (quoting *Robertson v. Las Animas Cnty. Sheriff’s Dep’t*, 500 F.3d 1185, 1196 (9th Cir. 2007)).

22 **1. Plaintiffs fail to adequately allege disability under the ADA.**

23 To prove disability under the ADA, a plaintiff must show that he has

24 (A) a physical or mental impairment that substantially limits one or
25 more of the major life activities of such individual; (B) a record of
26 such an impairment; or (C) [is] regarded as having such an
27 impairment.

28 See *Bresaz*, 136 F. Supp. 3d at 1132 (quoting 42 U.S.C. § 12102(1)). Plaintiffs have not clearly
29 alleged whether Taylor had a disability under option (A), (B), or (C).

30 Courts generally require that a party who alleges that he or she is disabled under the ADA
31 “plead the disability with some factual specificity.” *Id.* at 1135-36. “[A] successful plaintiff will
32 usually allege that he or she suffered from a specific, recognized mental or physical illness.” *Id.* at
33 1136. “A plaintiff additionally must specify what major life activities his disability limits.”

1 *Alejandro v. ST Micro Elecs., Inc.*, 129 F. Supp. 3d 898, 907-08 (N.D. Cal. 2015).

2 Plaintiffs fail to allege any facts regarding Taylor's purported disability. Plaintiffs merely
3 state that "Taylor was suffering a mental health episode." (Complaint, ¶ 19.) Plaintiffs do not
4 provide a description of how the mental health episode related to a disability, whether this episode
5 was a first occurrence or part of a series of episodes, or whether the mental health episode was
6 related to a broader impairment. Plaintiffs' allegations of a mental health episode fall short of the
7 factual specificity required to prove a disability and provides even less factual content than other
8 complaints that were also found to be insufficient. *See, e.g., Sincerny v. City of Walnut Creek*, 17-
9 cv-02616-HSF, 2017 WL 4642432, at *5 (N.D. Cal. Oct. 17, 2017) (allegations of "physical and
10 neurological limitations, including diminished mental capacity," caused by brain surgery
11 complications, were insufficient); *Bell v. U.C. Davis Med. Ctr.*, 2:11-cv-1864 MCE AC PS, 2013
12 WL 1896318, at *4 (E.D. Cal. May 6, 2013), *report and recommendation adopted*, 2:11-cv-1864
13 MCE AC PS, 2013 WL 2664552 (E.D. Cal. Jun. 11, 2013) (allegations of a "type II serious
14 medical condition . . . that is found in people with certain long-term chronic medical conditions"
15 were insufficient). Instead, Plaintiffs' allegations are conclusory and insufficient, and do not
16 provide sufficient specificity. *See Hall v. City of Weed*, No. 2:20-cv-01789-TLN-DMC, 2021 WL
17 4078031, at *5 (E.D. Cal. Sept. 8, 2021) (a singular allegation that the plaintiff in the case was
18 "regarded as having or perceived to have a physical or mental impairment" was conclusory and
19 insufficient); *Farmer v. County of Calaveras*, 1:18-cv-00009-DAD-SAB, 2018 WL 1919900, at
20 *6 (E.D. Cal. Apr. 24, 2018) (allegations that merely state the existence of a "mental illness,
21 disability and medical impairment[] were insufficient and conclusory).

22 The Court also notes that it has found "no case law . . . where a party has stated a
23 cognizable ADA disability discrimination claim based on a single, isolated incident of mental
24 illness, particularly where there is no diagnosis of mental illness or history of mental illness."
25 *Bresaz*, 136 F. Supp. 3d at 1137.

26 Because Plaintiffs do not identify any qualifying disability, they fail to establish the first
27 element of their ADA claim.

1 **2. Plaintiffs fail to allege knowledge and motivation.**

2 Plaintiffs also allege that Officers Fletcher and Overton failed to reasonably accommodate
3 Taylor's disability and that the Officers were deliberately indifferent towards Taylor's disability-
4 related needs.

5 “Before a public entity can be required under the ADA to provide a disabled individual an
6 auxiliary aid or service, a public entity must have knowledge of the individual's disability and the
7 individual's need for an accommodation.” *Robertson v. Las Animas Cty. Sheriff's Dep't*, 500 F.3d
8 1185, 1196 (9th Cir. 2007). “[T]he entity must have knowledge that the individual is disabled,
9 either because that disability is obvious or because the individual (or someone else) has informed
10 the entity of the disability.” *Id.* Further, Plaintiffs must allege that the Officers acted with
11 deliberate indifference toward Taylor, which “requires both knowledge that a harm to a federally
12 protected right is substantially likely, and a failure to act upon that [] likelihood.” *Duvall*, 260
13 F.3d at 1139.

14 Because Plaintiffs fail to allege the existence of any disability, it reasonably follows that
15 Plaintiffs have not sufficiently alleged facts showing the Officers were aware of any such
16 disability, nor that the Officer's actions were motivated by the disability. The Complaint merely
17 states that Fletcher “recognized that Taylor was suffering a mental health episode” without stating
18 how he knew that to be the case. (Complaint, ¶ 19.) Plaintiffs also fail to allege how the Officers'
19 actions were motivated by Taylor's purported disability.

20 Accordingly, Plaintiffs fail to allege sufficient facts to state a claim for relief under the
21 ADA. The Court also notes that any ADA claims against Officers Fletcher and Overton as
22 individuals fail because they are not a “public entity.” *See City & Cnty. of S.F. v. Sheehan*, 575
23 U.S. 600, 610 (2015). Therefore, the Court DISMISSES Plaintiffs' ADA claim as asserted against
24 the individual officers without leave to amend and DISMISSES Plaintiffs' ADA claim as asserted
25 against the City with leave to amend.

CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant's motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) with leave to amend. Should Plaintiffs wish to amend their complaint, they may file an amended complaint no later than October 28, 2022.

IT IS SO ORDERED.

Dated: October 5, 2022

JEFFREY S. WHITE
United States District Judge

United States District Court
Northern District of California